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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,971	05/15/2001	Takao Omachi	NEC N01268	1601
27667	7590	05/17/2006	EXAMINER	
HAYES, SOLOWAY P.C. 3450 E. SUNRISE DRIVE, SUITE 140 TUCSON, AZ 85718			LAYE, JADE O	
			ART UNIT	PAPER NUMBER
			2623	

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/855,971

Applicant(s)

OMACHI, TAKAO

Examiner

Jade O. Laye

Art Unit

2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: arguments not persuasive.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


CHRIS KELLEY
Jade O. Laye
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

ADVISORY ACTION

Response to Arguments

I. Applicant's arguments filed 4/25/06 have been fully considered but they are not persuasive. Accordingly, the Examiner maintains the previous ground of rejection.

Applicant argues the present proposed invention requires using the same channel for displaying the commercial messages and, therefore, this limitation is not met by the applied references. (Response, Pg. 2). However, the Examiner disagrees because Applicant's claim language does not reflect this feature.

Applicant's claim language does not require all commercials be transmitted on a single channel frequency. In Claim 1, Applicant's language recites the messages are sent, "...over a same channel..." and "...assigning each...commercial...to one of a plurality of voice channels...". This first recited portion, "over a same channel," can be broadly interpreted as requiring the commercials to be sent over a single communication channel, such as coax cable, fiber optical cable, etc. A "channel" can be nothing more than a communications path. Simply because Applicant recites "channel" does not mean this is a single channel frequency.

The second portion of Claim 2, which addresses assigning the commercials to one of a plurality of channels, could be broadly interpreted as assigning multiple commercials to multiple channels. For example, if I assign commercial 1 to channel 1 and commercial 2 to channel 2, I have assigned "each of ... said plurality of said commercial messages...to one of a plurality of voice channels..." as recited in Claim 1. Each commercial message has, in fact, been assigned to one of the voice channels.

It is suggested Applicant amend his claims to more accurately reflect his interpretation of the claim language. For example, Applicant may amend the phrase “over a same channel” to recite “over a same channel frequency.” Also, Applicant may amend the second phrase discussed above to recite “assigning each of voices of said plurality of said commercial messages to one single voice channel frequency.” This would appear to reflect Applicant’s claim interpretation and facilitate further prosecution.

Accordingly, the Examiner maintains the previous ground of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jade O. Laye whose telephone number is (571) 272-7303. The examiner can normally be reached on Mon. 7:30am-4, Tues. 7:30-2, W-Fri. 7:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner: Jade O. Laye
May 6, 2006.